

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: The Levi-Nielsen Company, Inc., 30 Boltwood Walk, Amherst, MA 01002

Owners: The Levi-Nielsen Company, Inc. (Map 17D, Parcel 24)
Stanley Rock (Map 17D, Parcel 21)
Town of Amherst Conservation Commission, (Map 18C, Parcel 80 & Map 21A, Parcel 62)

Location: 650-652 South East Street
(Map 17D, Parcels 21 and 24; Map 18C, Parcel 80; Map 21A, Parcel 62,
R-O/PURD and FPC/PURD Zones).

Date Application filed with the Town Clerk: November 22, 2005

Nature of request: Petitioner seeks a Special Permit under Section 4.4 of the Zoning Bylaw, Planned Unit Residential Development (PURD), to construct a total of 25 dwelling units (1 single-family house plus 16 units in 8 duplex buildings and 8 units in 2 townhouse buildings)

Legal notice: Published in the Daily Hampshire Gazette on November 30 and December 7, 2005, and sent to abutters on November 29, 2005.

Board members: Zina Tillona, Ted Rising and Barbara Ford (Russell Frank for 9/13/06 only)

Submissions: For submissions see "List of Documents Received by the Zoning Board of Appeals with regard to Scott Nielsen/Strawberry Fields Application for Special Permit, January 19, 2006 revised March 2, 2006, revised March 24, 2006, revised August 15, 2006, revised October 12, 2006", on file with the Zoning Board of Appeals records in the Planning Department

Site Visit: December 12, 2005

At the site visit the Board was met by Scott Nielsen and Jody Dole of The Levi-Nielsen Company. Also present were neighbors Jim Lochner, Carol Gray, Chris Allison, Gary Burnham, Lyle Denit and Heather Colson. The Board observed the following:

- The location of the property on a well-traveled road that connects North and South Amherst;
- The approximately 7-acre site that is proposed to be developed;
- Across the bike path, the approximately 100-acre site that was donated to the Town of Amherst by a previous land owner;
- The location of the proposed main entry drive for the new development;
- The approximate location of the Town Right of Way along the east side of South East Street;
- The locations of Test Pits #1, #2, #5 and Test Pit #8 as shown on the plans submitted with the application;
- The approximate location of the intersection of the proposed loop road with the main entry drive;
- The location of the southern property line bordering the Thaw property;
- The edge of the delineated wetlands;
- The approximate location of the railroad tracks beyond the field to the east;

- The location of Stanley Rock's proposed new driveway;
- The views across the fields from 627 and 635 South East Street and other points along the western edge of South East Street;
- The location of the existing "cart path" and some of the larger existing trees, as shown on the plans submitted with the application.

Public Hearing: December 15, 2005.

At the public hearing Scott Nielsen presented the application. Jody Dole of The Levi-Nielsen Company and Michael Liu and Carlos Nieto of The Berkshire Design Group were also present and participated in the presentation. They made statements regarding:

- The history of the site;
- The current plan to develop the site;
- The zoning of the site;
- The affordable units proposed;
- Traffic impact;
- Proposed architecture;
- Trash pick-up;
- Access across the site by the town staff;
- The accessibility of the units;
- The size of the site;
- Common open space;
- Fire Department review;
- Stormwater management;
- Proposed landscaping;
- Proposed lighting;
- Conservation Commission review;
- Discussions with the Housing Partnership.

The applicants presented a 3-D computer model of the proposed project.

Members of the public spoke about the project:

- Marielena Garcia of 74 North Whitney Street spoke in favor of the project.

The following people spoke in opposition to the project:

- Carol Gray of 815 South East Street
- Jocelyn Johnson of 603 South East Street
- Kathleen Auble of 651 South East Street
- Isolde Stein of 925 South East Street
- Joan Jones of 611 South East Street
- Mary Snyder of 870 South East Street
- Roger Webb of 1141 South East Street
- Vivian Carey of 1141 South East Street
- Gary Abbott of 627 South East Street
- Sonya Sofield of 1339 South East Street
- Lance Davis of 627 South East Street
- Karen Levine of 59 Valley View Drive
- Jeff Lee of 815 South East Street

- Patricia Ramsey of 70 Larkspur Drive
- Heather Colson of 784 South East Street
- Bob Wellman of 60 Valley View Circle
- Brian Hagenbach of Flat Hills Road
- Mitch Pine of 31 Valley View Circle
- David Snyder of Bay Road
- Attorney Don Allison, representing Nick and Kate Thaw of 666 South East Street
- Stan Maron of 10 Sutton Court

The public expressed concerns including:

- Density
- The “Rock lot”
- The adherence to the PURD Bylaw
- The “donated land”
- Previous Special Permits granted for this property
- Easements across the property
- Environmental issues
- Wildlife
- Aquifer issues
- Traffic impacts
- Pedestrian safety
- Sidewalks
- Lighting
- Drainage, flooding and hydrology
- The height of the buildings
- Section 10.38 of the Zoning Bylaw
- Views to the east from their homes.

Mike Olkin of 659 South East Street commented about the project and voiced some concerns.

Dom Sacco of the Massachusetts Department of Conservation and Recreation, the owner of the Norwottuck Rail Trail commented and expressed concerns about the project.

Mary Wentworth of 22 Lessey Street expressed concerns about the proceedings.

Connie Krueger of 15 Hop Brook Road commented about the project and expressed concerns about the affordability of some of the units.

Barbara Ford MOVED to continue the evidentiary portion of the public hearing to January 19, 2006, at 7:30 p.m. Ted Rising SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: January 19, 2006

At the continued public hearing Scott Nielsen presented the petition. He was accompanied by his attorney, Brad Shimel, and his consultants, Mark Darnold and Mike Liu, of The Berkshire Design Group. They commented on many issues, including:

- The land donated to the Town and the Kestrel Trust

- Zoning
- Previous Special Permits
- Meetings with abutters
- Possibilities for by-right developments on the site
- Setbacks and heights of the proposed buildings
- Responses to the concerns of the Town Engineer
- Affordable units
- The “Rock” lot.

The Board discussed the following issues:

- Clear title to the property
- Land condominiums
- Affordable housing and the Rock lot
- Separation between Rock house and rest of development
- Target market of this development
- Arrangement of the buildings on the site
- Public access to the land
- Access for town employees
- Notice of Intent submitted to the Conservation Commission
- Traffic issues
- Location of possible new sidewalk
- Site lighting
- Landscape plan
- Grading and open space

Members of the public spoke in opposition to the project:

- Carol Gray of 815 South East Street
- Janet McGowan of 706 South East Street
- Lance Davis of 627 South East Street
- Joanne Jones of 611 south East Street
- Kathleen Auble of 651 South East Street
- Rachel Mustin of 1006 South East Street
- Bob Wellman of 60 Valley View Circle
- Sonya Sofield of 1339 South East Street
- Jocelyn Johnson of 613 South East Street
- Heather Colson of 784 South East Street
- Gary Burnham of 635 South East Street
- Lyle Denit of 56 Valley View Circle
- Jim Lochner of 64 Valley View Drive
- David Keenan of 28 Shays Street

The public expressed concerns including:

- The size of the site
- The donated land and whether it could be considered
- The Farm Committee and the Conservation Commission
- The upcoming traffic study

- The agreement among Mr. Nielsen, Mr. Rock and the Rock family
- The Rock lot vis-à-vis affordability
- The reciprocal easement for the old farm road
- Waivers
- Traffic and pedestrian safety and sidewalks
- Wetlands
- Title to the property
- Views
- Density
- The compatibility of this development with previous comprehensive plans
- Separation between the condominiums and the Rock lot
- Height of the buildings
- Drainage and hydrology
- Access to the conservation land
- Parking on site
- The past history of the site
- A hydrogeologic study
- The impact of more children on the school system.

Mike Olkin of 659 South East Street commented on the project and made suggestions about how to improve it.

Connie Krueger of 15 Hop Brook Road commented about the impact of the development, including the density and the lack of amenities and public transportation.

Mr. Rising MOVED to continue the evidentiary portion of the public hearing to March 2, 2006, at 7:30 p.m. Ms. Ford SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: March 2, 2006

Scott Nielsen, Jody Dole, Attorneys Michael Pill and Brad Shimel and Michael Liu of The Berkshire Design Group made the presentation. They commented on issues including:

- The right of the applicant to build on the property
- Alternative plans for what could be built by right
- Views
- The new alternative plan
- Universal access
- The lack of evidence for an easement
- Access by town staff members
- Access to the donated land
- Drainage
- Conservation Commission jurisdiction
- The issue of a hydrogeologic study
- Wetland delineation
- Traffic study
- Affordable housing
- Universal access

- The target market (i.e. over 55)
- Easements
- Soils and groundwater.

The Board made comments on various issues including:

- Density and the possibility for fewer units
- Common open space
- Architectural designs
- The previously-approved “Flower Plan”.

Members of the public spoke in opposition including:

- Nick Thaw of 666 South East Street
- Jim Lochner of Valley View Drive
- Gary Burnham of 635 South East Street
- Bob Wellman of 60 Valley View Circle
- Jocelyn Johnson of 603 South East Street
- Joanne Jones of 611 South East Street
- Abbe Vredenberg of Valley View Drive
- Janet McGowan of 706 South East Street
- Carol Gray of 815 South East Street

The public made comments on:

- Hydrology and hydrogeologic issues
- Use of and access to the donated land
- The “Flower Plan”
- Views
- Traffic
- Parking
- Beaver activity
- Equitable powers of the Zoning Board
- Quasi-judicial administrative powers of the Zoning Board
- Access to the cart path
- Flooding
- Subsurface hydrology
- Rezoning
- Farm Committee’s recommendations
- Old Farm Road Reciprocal Easement
- PURD requirements
- Section 10.38

The Board discussed whether a hydrologic study should be done and if so who would pay for it and what would be its scope.

Ms. Ford MOVED to continue the evidentiary portion of the public hearing to March 29, 2006, at 6:30 p.m. Mr. Rising SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: March 29, 2006

At the continued public hearing Scott Nielsen presented the petition. He commented on the following issues:

- Development alternatives, including affordable cluster
- Planning Board recommendations
- Town Engineer's comments on traffic impact report
- Drainage
- Views
- Setback requirements
- Condominiums versus single-family houses
- Preliminary Subdivision Plans approved by Planning Board
- Rezoning
- "Aging-in-place"
- Universal access
- Greater good of the Town of Amherst
- Option #2 site plan
- Density
- Open Space
- Claims regarding an easement and the old cart path
- Public access to and across the site
- Parking
- Grading.

Bruce Hilson, the traffic engineer, presented the traffic study.

Mark Darnold, an engineer with The Berkshire Design Group, presented a cross-section drawing and other information about drainage and groundwater.

The Board asked questions about the traffic study, sidewalks and parking.

Members of the public spoke:

- Mitch Pine of 31 Valley View Circle
- John Bamberger of 33 Kellogg Avenue
- Carol Gray of 815 South East Street
- Nick Thaw of 666 South East Street
- Jocelyn Johnson of 603 South East Street
- Jeff Lee of 815 South East Street
- Connie Lenz of 32 Mountain View Circle
- Abbe Vredenberg of 64 Valley View Circle
- Jim Lochner of 64 Valley View Circle
- Avril Wellman of 60 Valley View Circle
- Janet McGowan of 706 South East Street
- Bob Wellman of 60 Valley View Circle
- Lance Davis of 627 South East Street
- Brian Duval of 422 Belchertown Road

They commented on issues including:

- Alternative plans proposed for the site

- Guidelines for over-55 design
- Bicyclist's, runner's and pedestrian's safety
- Views
- Need for blinking light and/or police presence
- Planning Board recommendations on density, size of units, garage size
- Need for hydrological study
- Presence of wildlife, including rare or endangered species
- Habitat fragmentation
- Need for independent assessment of traffic study
- Need for sidewalks
- Density
- Requirements of PURD
- Preservation of views
- Comparison with density of and coverage of Flower plan
- Preservation of open space
- High cost of proposed condominiums
- The character of South Amherst
- Urbanization and overdevelopment
- Sanding and snow removal
- Drainage and stormwater detention

The Board discussed possible locations for sidewalks.

Ms. Ford MOVED to continue the evidentiary portion of the public hearing to April 26, 2006, at 6:30 p.m.

Mr. Rising SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: April 26, 2006

Mr. Nielsen and Jody Doele presented the petition. They commented on the following issues:

- Drainage
- Traffic
- Comments of the Town Engineer
- Views
- Easements
- Rezoning
- Alternative plans
- Density
- Open space
- "Aging-in-place"
- Universal access
- Affordable units
- Endangered species
- Revised site plan
- Elimination of one unit
- Roof lines and architecture
- Sidewalks

- Greater interests of the Town
- Landscaping plan

Jason Skeels, Town Engineer, commented on the traffic study, traffic conditions in the vicinity and what can be done to improve safety. Mr. Skeels also commented on test pits, soil logs, detention pond locations, stormwater calculations. He stated that he was satisfied with the traffic study and the proposed stormwater control system.

Members of the public spoke in opposition to the project:

- Nick Thaw of 666 South East Street
- Jocelyn Johnson of 603 South East Street
- Avril Wellman of 60 Valley View Circle
- Carol Gray of 815 South East Street
- Heather Colson of 784 South East Street
- John Bamberger of 33 Kellogg Avenue
- Joanne Jones of 611 South East Street
- Janet McGowan of 706 South East Street
- Sonya Sofield of 1339 South East Street
- Jan Eidelson of 80 Kellogg Avenue

They commented on:

- Traffic
- Hydrogeology
- Wetlands and vernal pools
- Drainage
- Flooding of the bike path
- Beaver problems
- Views
- Density and PURD requirements
- Easement-by-necessity
- Building coverage and lot coverage
- Aging of the residents
- Affordability
- Rail trail
- The Flower plan
- Rezoning

The Board noted that the following issues had been dealt with sufficiently:

- Easement
- Rezoning
- Traffic
- Drainage

However, there were still issues that remained to be resolved, including architecture, parking, the Rock lot, the issue of affordability and views.

Ms. Ford MOVED to continue the evidentiary portion of the public hearing to May 24, 2006, at 6:30 p.m.
Mr. Rising SECONDED the motion. The Board VOTED unanimously to continue the public hearing.

Continued Public Hearing: May 24, 2006

Ms. Tillona noted that the Board was waiting to receive a recommendation from the Conservation Commission on this project.

Nancy Gregg of 131 Rolling Ridge Road, a member of the Housing Partnership/Fair Housing Committee, presented information about discussions that the HP/FH Committee had with Mr. Nielsen about the 3 affordable units required by Section 14 of the Zoning Bylaw. She also presented information about how affordability is determined.

The Board discussed the issue of affordability.

Mr. Nielsen spoke about the following issues:

- Views
- The Concept #3 plan
- Density
- Donated land
- Alternative development options
- Aging-in-place
- Universal access
- Reduction in density
- Affordable units

The Board noted that they had heard sufficient information on views, density and aging-in-place. They still needed to hear from the Conservation Commission.

Members of the public spoke in opposition to the project as follows:

- Nick Thaw of 666 South East Street
- Carol Gray of 815 South East Street
- Joanne Jones of 611 South East Street
- Sonya Sofield of 1339 South East Street
- Janet McGowan of 706 South East Street

They commented on the following:

- Landscaping and screening
- Wetlands and jurisdiction of the Conservation Commission
- Views
- PURD requirements
- Density
- Criteria in Section 10.38 of the Zoning Bylaw
- Economic impact on town of this development
- Target market of over-55
- Traffic
- Height and size of proposed buildings
- The Flower plan

- The Rock lot
- The agreement between Stan Rock and Scott Nielsen

Mr. Rising MOVED to continue the evidentiary portion of the public hearing to July 13, 2006, at 6:30 p.m. Ms. Ford SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing: July 13, 2006

Mr. Rising was present. Ms. Ford and Ms. Tillona were not present.

Mr. Rising read an email from Scott Nielsen, dated July 3, 2006, requesting continuation of the public hearing. Mr. Rising continued the evidentiary portion of the public hearing to August 24, 2006.

Continued Public Hearing: August 24, 2006

Mr. Rising and Ms. Ford were present. Ms. Tillona was not present due to resignation.

Mr. Rising stated that he wished to send a letter to the Select Board requesting that Ms. Tillona be reappointed to the Zoning Board of Appeals. Ms. Ford agreed that a letter should be sent. Mr. Rising and Ms. Ford composed a letter to sign and send to the Select Board.

Ms. Ford MOVED to continue the evidentiary portion of the public hearing to September 13, 2006. Mr. Rising SECONDED the motion. Ms. Ford and Mr. Rising VOTED to continue the evidentiary portion of the public hearing.

Continued Public Hearing: September 13, 2006

Mr. Rising, Ms. Ford and Mr. Frank were present.

Mr. Rising read a letter to the Board from The Levi-Nielsen Company, Inc., dated September 12, 2006, requesting withdrawal without prejudice of the application and also requesting a waiver of the fee for a future application for a similar development on the same parcel of land.

Ms. Ford MOVED to close the evidentiary portion of the public hearing. Mr. Frank SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Decision:

Mr. Frank MOVED to approve the withdrawal without prejudice. Ms. Ford SECONDED the motion.

The Board VOTED unanimously to approve the WITHDRAWAL WITHOUT PREJUDICE of the application as applied for by The Levi-Nielsen Company, Inc., under Section 4.4 of the Zoning Bylaw, Planned Unit Residential Development (PURD), to construct a total of 25 dwelling units (1 single-family house plus 16 units in 8 duplex buildings and 8 units in 2 townhouse buildings) at 650-652 South East Street (Map 17D, Parcels 21 and 24; Map 18C, Parcel 80; Map 21A, Parcel 62, R-O/PURD and FPC/PURD Zones).

Mr. Rising MOVED to approve waiver of the fees for a future application of The Levi-Nielsen Company, Inc., for a similar development on the same parcel of land. Mr. Frank SECONDED the motion. The Board VOTED unanimously to approve waiver of the fees.

EDWARD RISING

BARBARA FORD

RUSSELL FRANK

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2006.

NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2006,
in the Hampshire County Registry of Deeds.